

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHARLES C. WEDDLE, III, derivatively on
behalf of nominal defendant Motricity, Inc.,

Plaintiff,

v.

RYAN K. WUERCH, ALLYN P. HEBNER,
JAMES R. SMITH, JR., JAMES N. RYAN,
HUNTER C. GARY, BRETT ICAHN,
LADY BARBARA JUDGE, SUZANNE H.
KING, BRIAN V. TURNER, JAMES L.
NELSON and JAY FIRESTONE,

Defendants,

—and—

MOTRICITY, INC.,

Nominal Defendant.

No. C11-1520 TSZ

**ORDER CONSOLIDATING RELATED
CASES AND APPOINTING LEAD
PLAINTIFFS AND COUNSEL**

NOTE ON MOTION CALENDAR:

Friday, October 21, 2011

MOHAMMED S. MAKDA, on behalf of
nominal defendant Motricity, Inc.,

Plaintiff,

v.

RYAN K WUERCH, HUNTER C. GARY,
BRETT ICAHN, LADY BARBARA
JUDGE, JEFFREY A. BOWDEN,
SUZANNE H. KING and BRIAN TURNER,

Defendants,

—and—

MOTRICITY, INC.,

Nominal Defendant.

No. C11-1597 TSZ

This matter is before the Court(s) on the motion of plaintiffs Charles C. Weddle III (in C11-1520 TSZ, docket no. 3) and Mohammed S. Makda (in C11-1597 TSZ, docket no. 3) (collectively, the “Weddle Group”) to (i) consolidate the two actions for all purposes; (ii) appoint the Weddle Group as lead plaintiffs; (iii) appoint Levi & Korsinsky LLP and Federman & Sherwood as co-lead counsel and Law Offices of Clifford A. Cantor, P.C. as liaison counsel; and (iv) enter the proposed orders submitted with this motion. Nominal Defendant Motricity does not object to consolidation.

For the reasons given in the Weddle Group’s motion, the Court finds and concludes that the motion is well-taken, and therefore hereby **ORDERS** as follows:

(i) **Identification of cases.** This order pertains to the following two shareholder derivative cases:

Weddle v. Wuerch, et al., No. C11-1520 (W.D. Wash.) filed Sep. 13, 2011

Makda v. Wuerch, et al., No. C11-1597 (W.D. Wash.) filed Oct. 5, 2011

and any subsequently filed derivative actions described in Part (ix), below.

(ii) **Consolidation.** These two actions, *Weddle* and *Makda* and any subsequently filed derivative actions described in Part (viii), below, are consolidated for all purposes, including pretrial proceedings and trial.

(iii) **Caption.** Every pleading filed in this consolidated action, or in any separate action included herein, shall bear the following caption:

In re MOTRICITY INC.
DERIVATIVE LITIGATION

Master File No. C11-1520 TSZ

This document relates to:
[ALL] ACTIONS

(iv) **Master Docket.** The files of the consolidated action shall be maintained in one file under Master File No. C11-1520 TSZ.

(v) **Orders Already Entered.** In *Weddle*, on September 19, 2011, the Court entered an order regarding initial disclosures, joint status report, and early settlement (dkt. # 2 in No. C11-1520 TSZ) (“*Weddle* Initial Scheduling Order”). In *Makda*, on September 29, 2011, the Court entered a similar order (dkt. # 2 in No. C11-1597 TSZ) (“*Makda* Initial Scheduling Order”). The *Weddle* Initial Scheduling Order will apply to the consolidated case and the *Makda* Initial Scheduling Order will not.

(vi) **Pleadings and Responses.** No response is necessary to the complaints filed in the individual derivative actions prior to consolidation. Lead Plaintiff (see below) in the consolidated action will file a consolidated amended and/or supplemented complaint (“CASC”) within 14 days after the date of this order. The CASC will be deemed the operative complaint in the consolidated action; and defendants need respond only to the CASC. Defendants will respond to the CASC by the later of 21 days after proper service and 21 days after the date the CASC is filed; however if defendants file a stay motion before their responses to the CASC are due, then the response date shall be extended until after the Court rules on defendants’ stay motion.

(vii) **Lead Plaintiff.** The Weddle Group, consisting of plaintiffs Charles C. Weddle III and Mohammed S. Makda, are appointed as the lead plaintiff in the consolidated action.

(viii) **Organization of Plaintiffs’ Counsel.** Co-Lead Counsel for plaintiffs for the conduct of these consolidated actions are as follows:

LEVI & KORSINSKY LLP
Eric M. Andersen
30 Broad St., 15th Fl.
New York, NY 10004
Tel: (212) 363-7500
Fax: (212) 363-7171

FEDERMAN & SHERWOOD.
William B. Federman
10205 N. Pennsylvania Ave.
Oklahoma City, OK 73120
Tel: (405) 235-1560
Fax: (405) 239-2112

Each of Co-Lead Counsel shall have authority to speak for plaintiffs in this consolidated action in matters regarding pre-trial procedure, trial, and settlement negotiations and shall make all work assignments in such manner as to facilitate the orderly and efficient prosecution of this litigation and to avoid duplicative or unproductive effort.

Co-Lead Counsel shall be responsible for coordinating all activities and appearances on behalf of plaintiffs and for the dissemination of notices and orders of this Court in this consolidated action. No motion, request for discovery, or other pre-trial or trial proceedings shall be initiated or filed by any plaintiffs except through plaintiffs' Co-Lead Counsel or their designee.

Each of Co-Lead Counsel also shall be available and responsible for communications to and from this Court in this consolidated action, including distributing orders and other directions from the Court to counsel.

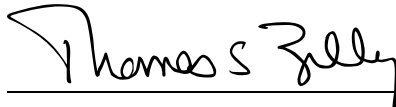
Liaison counsel for plaintiffs for the conduct of these consolidated actions is as follows:

LAW OFFICES OF CLIFFORD A. CANTOR, P.C.
Cliff Cantor
627 208th Ave. SE
Sammamish, WA 98704
Tel: (425) 868-7813
Fax: (425) 732-3752

(ix) **Newly filed or transferred actions.** This Order shall apply to each shareholder derivative action arising out of the same or substantially the same transactions or events as these cases, which is subsequently filed in or transferred to this Court. When a case that properly belongs as part of the *In re Motricity Inc. Derivative Litigation*, Master File No. C11-1520 TSZ, is hereafter filed in this District or transferred here from another district, this Court requests the assistance of counsel in calling to the attention of the clerk of the Court the filing or transfer of any case that might properly be consolidated as part of this consolidated action, and counsel are to assist in assuring that counsel in subsequent actions receive notice of this Order.

(x) **Pro hac vice admission.** Any lawyer admitted pro hac vice in any of the actions making up this consolidated action are deemed admitted pro hac vice in this consolidated action.

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2 Dated this 26th day of October, 2011.
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6 Thomas S. Zilly
7 United States District Judge
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9 Presented by:

10 Law Offices of Clifford A. Cantor, P.C.

11 s/ Cliff Cantor, WSBA # 17893

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